

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

STEVEN E. HAMMER, individually and on behalf of all others similarly situated, )  
vs. Plaintiff, )  
JP'S SOUTHWESTERN FOODS, L.L.C. ) No. 08-0339-CV-W-FJG  
d/b/a JOSE PEPPER'S BORDER GRILL & )  
CANTINA; and DOES 1 through 10, inclusive, )  
Defendants. )

## ORDER

On June 3, 2011, defendant filed its Notice of Delay in Re-Opening Restaurant and Request for Clarification of Posting Class Notice (Doc. No. 246). Defendant indicates that the re-opening of its restaurant has been delayed, and requests clarification as to whether it should begin posting notice on June 8, 2011 (even though the restaurant will not be open to customers), or at some later date after the restaurant has been opened. Plaintiffs responded, requesting that defendant post notice at all Jose Peppers locations in the Kansas City metropolitan area, revise the notice slightly, and shift the costs of notice to defendant.

The Court will deny plaintiffs' requests. Instead, the Court believes the best solution to be having defendant post notice in its restaurant upon the re-opening of the restaurant. Plaintiffs, however, shall begin publication notice on June 8, 2011, as discussed in the Court's previous Order (Doc. No. 245).

Defendant's counsel shall file status reports with the Court regarding the progress of the re-opening of defendant's restaurant at one-week intervals, beginning on June 14, 2011. The Court expects notice to be posted in defendant's restaurant beginning immediately upon its re-opening.

The Court revises the following deadlines present in its most recent Order regarding the notice protocol.

- (1) Defendant's counsel shall file an affidavit with the Court on or before **Tuesday, September 6, 2011**<sup>1</sup>, evidencing the fact that notice was posted in a conspicuous location in its restaurant for 60 days. The affidavit must specify the location where notice was posted.
- (2) The deadline for requests for exclusions pursuant to Federal Rule of Civil Procedure 23(c)(2) as set out in the Notice shall be **September 16, 2011**.
- (3) Plaintiff's counsel shall file an affidavit with the Court which shall provide a list of all persons from whom exclusion requests have been received, identified by name and address, by **September 26, 2011**.

**IT IS SO ORDERED.**

/s/Fernando J. Gaitan, Jr.  
Chief United States District Judge

Dated: 06/07/11  
Kansas City, Missouri

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<sup>1</sup>This date was calculated from defendant's estimate that its restaurant would be re-opened, at the latest, by July 1, 2011.